26

HIGH COURT OF JUDICATURE CHHATTISGARH: BILASPUR

SINGLE BENCH : HON'BLE SHRI S.R. NAYAK, CJ

M.C.C.No.495 of 2006

APPLICANTS

1. M/s Sharma Publication Pvt. Ltd., a company duly incorporated under the relevant provisions of Companies Act, 1956, Through its Director Suresh Chandra Sharma son of Late Banshidhar Sharma, aged about 56 years, resident of Shree Vihar Colony, Tulsipar, Cuttack, Orissa.

2. Suresh Chandra Sharma, son of Late Banshidhar Sharma, aged about 56 years, Director, M/s Sharma Publication Pvt. Ltd resident of Shree Vihar colony, Tulsipar, Cuttack, Orissa.

VERSUS

RESPONDENTS:

1. State of C.G., through the Secretary, Ministry of School Education Department, D.K.S. Bhawan, Raipur.

2. The State Council of Educational Research and Training (SCERT), through its Director, Shankar Nagar, Raipur.

3. The Secretary, Ministry of School Education, D.K.S. Bhawan, Raipur.

Present: Ms. Madhu Modi, learned counsel for the petitioners.

Mr. Vinay Harit, learned Dy. A.G. for the State/ respondents.

ORAL ORDER

(Passed on 06th October, 2006)

I would rather begin with the caution administered by the Apex Court elsewhere that in appreciating the kind of averments/ pleadings setout in an affidavit like the one filed in support of the above MCC, the

27

Court shall not keep its commonsense in cold-storage and its experience at bay.

(2) The backdrop of the Members of the Chhattisgarh High Court Bar Association absenting from the Court proceedings on 23rd August 2006 as a mark of protest against the action of the State Government in appointing outsiders as Law Officers of the State, in brief, is as follows :

(3) It appears that on or before 22nd August 2006 the Bar Association had resolved that its members should abstain from the Court proceedings on 23rd August 2006. Having passed such resolution, on 22nd August 2006 at 1.30 p.m., Shri P.K.C. Tiwari, President of the Chhattisgarh High Court Bar Association accompanied by Shri Shailendra Dubey and Shri Ravish Verma and certain other senior members of the Association met the Chief Justice and presented a letter dated 22nd August 2006. The said letter reads as follows :

"To,

Hon'ble The Chief Justice
and his Companion Judges
High Court of Chhattisgarh
at Bilaspur.

Sub: Abstaining from Judicial works on 23.08.06.

Ref: Resolution of the High Court Bar Association, Chhattisgarh, Bilaspur.

Respected Sir,

Being aggrieved by the appointment of out side persons in public office (AG-office) in the State of Chhattisgarh, resulting in denial of opportunity to the local Advocates and insult. The General body has resolved that on 23.08.06 to register the protest against the decision of

28

the State Government, the Advocates would not participate in court proceeding in the High Court.

Therefore, the lawyers will abstain from judicial work on 23.08.06 as mark of protest and co-operation from the bench would be highly solicited.

This is for your kind information and necessary action.

Ravish Verma Secretary | Vice Chairman Bar Council | P.K. C. Tiwari President"

(4) The President and other members who had accompanied him told the Chief Justice that an outsider has been appointed as Additional Advocate General to conduct the cases of the State Government before the Supreme Court without considering any of the local advocates for that post and, therefore, the Bar Association had resolved that its members should abstain from the Court proceedings on 23rd August 2006 as a mark of protest. The President and other office bearers sought "co-operation" from the Chief Justice and the Judges of the High Court in support of their action. At 4.30 p.m., the same day all the Hon'ble Judges of the High Court met in the chamber of the Chief Justice and discussed about the resolution already passed by the Bar Association without prior consultation with or approval of the Chief Justice to abstain from the judicial work on 23rd August 2006 in the presence of Shri P.K.C. Tiwari, President of the Chhattisgarh High Court Bar Association, Shri Prashant Mishra, Chairman, State Bar Council, other office bearers and certain senior members of the Bar Association. After necessary reflection and discussion, it was unanimously felt by the Judges as well as the President of the Bar Association, the Chairman of the Chhattisgarh State Bar Council and other office bearers and members who were present that the

29

proposed boycott of the Court is totally unconstitutional and against the binding Judgment of the Supreme Court in **Ex. Capt. Harish Uppal Vs. Union of India and another** [1]. It was also felt that the ground mentioned for the proposed abstention from the Court work was very flimsy and the one which does not affect in any manner the dignity or honour or solemnity or credibility of the Bar. In the premise of the above shared common opinion it was decided that it would be totally wrong, unethical and unconstitutional for the members of the Bar Association to absent from the judicial work on 23rd August 2006 and the Bar Association should withdraw its move forthwith.

(5) Although the above was the shared common opinion of all the concerned, Shri P.K.C. Tiwari, President of the Chhattisgarh High Court Bar Association and other office bearers of the Association told the Chief Justice and other Judges that they would require some time on 23rd August 2006 to pass a resolution for withdrawing its earlier resolution to abstain from the judicial work on 23rd August 2006 and they assured the Chief Justice and other Judges that the members of the Association would attend the Court around 11.00 a.m. and that even before 11.00 a.m., they would also see that some advocates would be present in each Court to see that no case goes for default. But, they did not stand by their assurances and promises. When the Court assumed the work at 10.30 a.m. on 23rd August 2006, none of the members of the Bar Association were present. In the course of the proceedings for the day, later, only Shri

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1. (2003) 2 SCC 45

Utkarsh Verma, Dy. Government Advocate, Shri V.G. Tamaskar and Shri M.P.S. Bhatia, Advocates appeared in those cases where they have put in appearance.

(6) It is quite clear from the above letter of the President of the Bar Association that even before bringing to the notice of the Chief Justice the proposal to boycott the Court on 23rd August 2006, the Bar Association had resolved to boycott the Court on 23rd August 2006 in utter violation of the law declared by the Apex Court of the country in **Harish Uppal.** I place on record my total and the strongest disapproval of the *ex facie* unethical and unprofessional conduct of the members of the Bar Association who were parties to the resolution and who absented from the Court works.

(7) Erring is human; introspection/repentance is a virtue. In this case, learned counsel appearing for the petitioners has filed affidavit in support of the M.C.C. regretting for his absence on 23rd August 2006 and totally dissociating himself with the wrong decision taken by the Bar Association. In the course of his submission, learned counsel also tendered his unconditional apologies to the Court for being a party to the wrong decision of the Bar Association.

(8) No doubt, in **Harish Uppal**, the Supreme Court in more than one places has observed that mere disapproval of such action would not serve the purpose. In addition to the disapproval of the objectionable conduct, concrete actions are also suggested. Of course, this is one part of the problem. The other part of the same problem is whether innocent litigants, particularly, those litigants in civil matters having entrusted their cases to Advocates, are allowed to be prejudiced severely for the lapse, nay,

misconduct of their counsel. If I do not restore this case, it is trite, the petitioners would be subjected to great hardship and inconvenience and in some cases, irreparable injuries resulting in failure of justice. Striking a balance between what the Apex Court said in **Harish Uppal** and the other line of decisions in which it is held that on account of the lapses on the part of the Advocates the parties should not be allowed to suffer, I am inclined to restore this writ petition with heavy heart and mind, and trusting that the members of this Bar would not indulge in such activities in future, particularly, on flimsy grounds which prompted them to absent from the Court work on 23rd August 2006. It is not that the High Court administration or the Bench had done some acts to question the integrity and independence of the Bar. The reason cited by the Bar to absent from the Court works had nothing to do with the High Court administration or the Bench or the conduct of the litigants whom they represent.

(9) In the result and for the foregoing reasons, I allow the M.C.C. No. 495 of 2006, with cost quantified at Rs.300/- payable to the Chhattisgarh High Court Legal Services Committee, within a period of fifteen days from today. The costs should be paid by the concerned learned counsel without seeking reimbursement of the same from the parties.

Sd/-
Chief Justice

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